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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

HOWARD McCONNELL;
LEAF G. HILLMAN;
ROBERT ATTEBERY;
FRANKIE JOE MYERS;
TERANCE J. SUPAHAN;
MICHAEL T. HUDSON;
BLYTHE REIS ; and
KLAMATH RIVERKEEPER;

Plaintiffs,

v.

PACIFICORP, INC., an Oregon Corporation;

Defendant.

Civil Case No.: CV 07-02382 WHA

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED**

Civil L.R. 3-12, 7-11

1 Plaintiffs Howard McConnell, Leaf Hillman, Robert Attebery, Frankie Joe Myers, Terance
 2 Supahan, Michael Hudson, Blythe Reis, and Klamath Riverkeeper (hereinafter collectively
 3 “Plaintiffs”), pursuant to Civil L.R. 3-12, hereby moves this Court to consider whether the instant case,
 4 *McConnell, et al. v. PacifiCorp, Inc.* (Case No. CV 07-02382 WHA), and *Klamath Riverkeeper, et al.*
 5 *v. PacifiCorp, Inc.*, (Case No. CV 07-6199 MMC) should be related.

6 The Court already related another Klamath Riverkeeper case concerning toxic algae on the
 7 Klamath River, *see Klamath Riverkeeper v. EPA*, Case No. CV 07-3908 WHA. Judicial economy
 8 would be served by also relating *Klamath Riverkeeper, et al. v. PacifiCorp, Inc.*, (Case No. CV 07-
 9 6199 MMC).

10 **I. STATEMENT OF RELATIONSHIP OF THE ACTIONS**

11 *McConnell, et al. v. PacifiCorp, Inc.* and *Klamath Riverkeeper, et al. v. PacifiCorp, Inc.*¹ are
 12 related because the harm giving rise to the claims in both cases stems from the same factual events.
 13 According to Civil L.R. 3-12,

14 “[A]n action is related to another when:

- 15 (1) The actions concern substantially the same parties, property, transaction or event;
 16 and
 17 (2) It appears likely that there will be an unduly burdensome duplication of labor and
 expense or conflicting results if the cases are conducted before different Judges.”

18 **A. The Actions have the Same Parties and Concern the Same Transaction or Events**

19 Klamath Riverkeeper, Howard McConnell, Leaf Hillman, Robert Attebery, and Blythe Reis are
 20 common plaintiffs in each action, and PacifiCorp, Inc. (“PacifiCorp”) is the defendant in both cases.
 21 Each case concerns the environmental conditions of the Klamath River and the Iron Gate and Copco
 22 dams and reservoirs on the River. The core fact present in both cases is that two pollutants,
 23

24
 25
 26 ¹ Plaintiffs do not discuss the relationship between *Klamath Riverkeeper, et al. v. PacifiCorp, Inc.*,
 27 (Case No. CV 07-6199 MMC) and *Klamath Riverkeeper v. EPA*, (Case No. CV 07-3908 WHA),
 28 because Civil L.R. 3-12(b) requires the party to file the related case motion in the earliest-filed case.
 However, the underlying facts regarding the harm to Riverkeeper’s members from *Microcystis*
aeruginosa and microcystin toxin are common to all three of the Klamath Riverkeeper cases.

1 *Microcystis aeruginosa* (a species of algae) and microcystin toxin (a toxin associated with this algae),
2 are causing environmental degradation that adversely impacts Klamath Riverkeeper's members.

3 In *McConnell, et al. v. PacifiCorp, Inc.*, the algae and toxin are the direct cause of the harm
4 suffered by Plaintiffs. PacifiCorp owns and operates the Iron Gate and Copco dams that generate and
5 discharge *Microcystis aeruginosa* and microcystin toxin to the Iron Gate and Copco reservoirs and the
6 Klamath River. Plaintiffs allege the contamination of the Klamath River and the reservoirs with
7 *Microcystis aeruginosa* and microcystin toxin directly harms Plaintiffs, and also harms Plaintiffs' and
8 the public's use of the Klamath River for religious, commercial, and recreational purposes, among
9 others. See Complaint, ¶¶ 66-79. Plaintiffs requested relief includes compensation for economic
10 losses, general damages, and punitive damages against PacifiCorp. See Complaint, Prayer for Relief.

11 The creation of, and harm caused by, *Microcystis aeruginosa* and microcystin toxin in the
12 Klamath River and the reservoirs form the basis of Klamath Riverkeeper's complaint in *Klamath*
13 *Riverkeeper, et al. v. PacifiCorp, Inc.* as well. In that case, Klamath Riverkeeper alleges that
14 PacifiCorp's operation of the Iron Gate and Copco dams and reservoirs violates the Federal Solid
15 Waste Disposal Act, 42 U.S.C. §§ 6901 *et seq.*, because the *Microcystis aeruginosa* and microcystin
16 toxin are generated by, and handled, stored, and disposed of from the Iron Gate and Copco dams and
17 reservoirs. Specifically, Klamath Riverkeeper alleges that PacifiCorp's operation of the Iron Gate and
18 Copco dams and reservoirs impairs and irreparably harms Klamath Riverkeeper's members' use and
19 enjoyment of the Klamath River.

20 The commonality of the essential underlying facts in each case, in conjunction with the status of
21 Klamath Riverkeeper, Howard McConnell, Leaf Hillman, Robert Attebery, Blythe Reis, and
22 PacifiCorp as parties to both cases, suggests that these cases should be related. In each matter, the
23 Court will be called upon to understand the science related to and evaluate the effects *Microcystis*
24 *aeruginosa* and microcystin toxin have on human health and the environment, and PacifiCorp's role in
25 generating and discharging waste to the Iron Gate and Copco reservoirs and the Klamath River.

26 **B. Judicial Resources Will Be Saved By Having the Actions Heard By the Same Judge**

27 Conducting these two cases before the same Judge will avoid duplication of labor. Whether
28 *Microcystis aeruginosa* and microcystin toxin are pollutants causing environmental degradation that is

1 harming Plaintiffs is the central factual issue in each case. Thus, the Judge in each case will be
2 presented with substantially similar information on these pollutants. The Judge will be called upon to
3 understand the scientific data and information related to *Microcystis aeruginosa* and microcystin toxin.
4 Further, the Judge will be called upon to evaluate the effects of *Microcystis aeruginosa* and
5 microcystin toxin on both human health and the environment. It would conserve judicial resources to
6 have only one Judge hear the factual evidence that will be presented in these two cases.

7 The legal issues presented in each case are unique. However, as explained above, the factual
8 issues are so closely related that a factual determination in one case may conflict with a factual
9 determination in the second case. Therefore, it will avoid a duplication of labor and avoid conflicting
10 results if one Judge hears both cases and considers the same pertinent facts and makes a determination
11 of the respective laws based on those facts.

12 II. CONCLUSION

13 Klamath Riverkeeper respectfully requests that the Court relate the two cases discussed above
14 on the grounds that the core fact issue in both cases, whether *Microcystis aeruginosa* and microcystin
15 toxin in the Klamath River and the reservoirs are causing environmental degradation that harms the
16 human health and the environment is the same. Further, a duplication of judicial resources to
17 understand and evaluate the effects of these toxic substances would be avoided if these cases were
18 conducted before the same Judge. Since *Klamath Riverkeeper et al. v. PacifiCorp, Inc.*, (Case No. CV
19 07-6199 MMC) was just filed on December 6, 2007, Klamath Riverkeeper believes that there is no
20 impact on the case management schedule ordered for *McConnell v. PacifiCorp* should the Court deem
21 *Klamath Riverkeeper v. PacifiCorp, Inc.*, a related case.

22 Date: December 12, 2007

Respectfully Submitted,

23 /S/ Daniel Cooper

24 _____
Daniel Cooper

25 Attorney for Plaintiffs

26 Howard McConnell, Leaf Hillman, Robert
27 Attebery, Frankie Joe Myers, Terance Supahan,
28 Michael Hudson, Blythe Reis, and Klamath
Riverkeeper